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December 15, 1999

The Honorable Tom Bliley, Chairman
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to comment on the Electricity Competition and Reliability Act (H.R. 2944). As you know, the National Rural Electric Cooperative Association (NRECA) representing 32 million electric consumers in 46 states supported the action of the Subcommittee on Energy and Power to bring H.R. 2944 to the full Committee on Commerce. NRECA recognizes that legislation is the product of compromise. H.R. 2944, while not perfect, strikes a reasonable balance and promotes competition. To the extent the full Committee on Commerce contemplates changes to H.R. 2944, NRECA believes consumers will benefit best from competition if the following protections are met.

If competition is to benefit all electric consumers, both large and small, then it cannot be a competitive structure mandated by a large, remote federal agency with a one-size fits all, level-playing field template. Competition can provide an opportunity for all consumers to benefit if a federal restructuring law recognizes and supports the important structural and motivational differences between consumer-owned-utilities, taxpayer-owned-utilities, investor-owned-utilities, and other energy providers. Competition comes from differences. Innovation comes from differences. Price discovery comes from differences. Those things cannot come from a one-size-fits-all approach. **Importantly, H.R. 2944 recognizes that differences do exist and need to exist for competition to be effective. Differences in financing, in federal regulation, and in power supply are essential.**

Additionally, Congress must certainly recognize through the comments and actions of the largest profit-making utilities in the country that once competition exists for retail electric service, profit-making utilities will choose to not offer service to some consumers because such service is insufficiently profitable. To provide the levels of

return current investors seek, profit-making utilities will have to make choices about whom to offer service. The existence of consumer-owned electric cooperatives can provide all consumers with the structural remedy for acquiring the type of electric service they need. However, Montana, a restructured state, under the misguided view that competition needs a one-size-fits-all approach, enacted a law that prevents consumers from choosing the cooperative option in some cases. Montana Power Company is now leaving the electric business and many customers are left struggling for an electric service option. **Congress should eliminate state provisions that prevent consumers from using a cooperative to provide themselves with the type of electric service they need. Language in H.R. 2944 that "grandfathers" state laws should be modified to prevent the exclusion of cooperatives.**

Currently, investor-owned-utilities are constrained in their activities by the federal Public Utilities Holding Company Act (PUHCA), which protects investors and customers from some of the abusive practices that contributed to the great depression of the 1930s. Electric cooperatives did not exist when PUHCA was enacted. Further, electric cooperatives' local ownership, local control and local autonomy fit perfectly with the PUHCA concept. Thus, constraints on electric cooperatives' activities tend to be through state provisions. In many cases, cooperatives agreed to those constraints during earlier times, when competition in retail electric markets was not contemplated. However, **H.R. 2944 seeks to eliminate PUCHA to provide all investor-owned-utilities with the option to diversify. If the Congress eliminates PUCHA, it should also eliminate state constraints on electric cooperatives' ability to diversify. And, the PUCHA constraints and state constraints should be eliminated only in those states where retail competition exists.**

Consolidation and the resultant market power among the largest utilities will eliminate some competition. Electric cooperatives can remain locally owned, locally operated, and locally autonomous and still provide a countervailing balance of power in the marketplace if cooperatives are allowed to continue to work together in the new competitive marketplace, as they do now in the monopoly system. **H.R. 2944 limits the Federal Energy Regulatory Commission's (FERC) ability to review mergers between regulated utilities to 180 days and weakens ability to review mega-mergers. Such restrictions should be eliminated. Also, Congress should ensure that electric cooperatives can work together to serve regional or national accounts.**

Competition that benefits all consumers, and provides for innovation and price discovery should proceed at the pace that is manageable for each state. **H.R. 2944 does not mandate action by a state to open up its electric retail markets by a date certain. Congress should recognize the piercing wisdom in allowing states to take the lead in setting the pace for retail competition.**

As concerns regional transmission organizations (RTOs), reliability, interconnection of distributed generation, net metering, public purpose charges, reciprocity, and other technical issues, I respectfully refer you to my testimony on behalf of NRECA before the Subcommittee on Energy and Power on October 6.

Mr. Chairman, thank you for this opportunity to offer comments. I am hopeful it portends an open and inclusive process that proved to be so successful in the Subcommittee on Energy and Power. NRECA will be happy to participate. Please call me if you have any questions, or if I can assist in any way.

Sincerely,

Glenn English
Chief Executive Officer

GE:sp

Attachment

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Testimony of

Glenn English

Chief Executive Officer

National Rural Electric Cooperative Association

before the

Energy and Power Subcommittee
of the
Commerce Committee
U. S. House of Representatives

October 6, 1999

Executive Summary: NRECA evaluated each provision of H.R. 2944, "The Electricity Competition and Reliability Act," to determine its effect on competition and to establish the degree to which it enables electric cooperatives to continue to meet the needs of their consumer-members. Upon review, NRECA is recommending that four basic tenets be recognized:

- Guarantees the right of consumers to aggregate and the right of electric cooperative to assist those aggregation groups;
- Minimizes unnecessary or duplicative regulatory burdens on consumer-owned electric cooperatives;
- Puts all electric cooperatives on a level playing field with respect to the sale of non-electric products or services; and
- Permits electric cooperatives to work together to serve their consumers more efficiently.

NRECA and the electric cooperatives will continue to work towards these basic principles that we believe must be in place for true competition in a restructured electric energy industry. We pledge also our continuing cooperation in working with Chairman Barton, and with this Subcommittee, in crafting the specific legislation that meets our basic consumer requirements for the long term, and that works to ensure similar consumer protections for all electric consumers throughout the nation.

Introduction

Chairman Barton and Members of the Committee, I appreciate this opportunity to continue our dialogue on the restructuring of the electric utility industry. For the record, I am Glenn English, CEO of the National Rural Electric Cooperative Association, the Washington-based association of the nation's nearly 1,000 consumer-owned, not for profit electric cooperatives.

These cooperatives are locally governed by boards elected by their consumer owners, are based in the communities they serve and provide electric service in 46 states. The more than 32 million consumers served by these community-based systems continue to have a strong interest in the Committee's activities with regard to restructuring of the industry.

Electric cooperatives comprise a unique component of the industry. Consumer-owned, consumer-directed electric cooperatives provide their member-consumers the opportunity to exercise control over their own energy destiny. As the electric utility industry restructures, the electric cooperatives will be an increasingly important option for consumers seeking to protect themselves from the uncertainties and risks of the market. I would like to thank you, Mr. Chairman, and Members of the Committee for your receptiveness to the concerns and viewpoints of the electric cooperatives.

The title of the bill before the Committee, H.R. 2944, is The Electricity Competition and Reliability Act. We applaud the intention of the Chairman and the Committee to ensure true competition in the electric utility industry. We are evaluating each provision of the bill on the basis of whether it enhances or impedes competition, and whether it supports or impedes the ability of electric cooperatives to continue to meet the needs of our consumer-owners in that restructured industry.

At the beginning of my testimony, I would like to focus on a few key issues that we believe must be addressed if NRECA is to be able to support H.R. 2944. In the second part of this testimony below, I will discuss a number of other elements in the bill about which we are concerned. We intend to continue to work with the Committee and Congress to try to address those issues. In

the third part of my testimony I will also note a few simple changes we recommend to fix technical problems in the bill.

Key Priorities

NRECA and the electric cooperatives seek legislative language that would guarantee consumers access to the "cooperative option." We were looking to see if H.R. 2944 would:

- guarantee consumers the right to aggregate and the right of electric cooperatives to assist those aggregation groups;
- minimize unnecessary regulatory burdens on consumer-owned electric cooperatives;
- put all electric utilities on an level playing field with respect to the sale of non-electric products or services; and
- permit electric cooperatives to work together to serve their consumers more efficiently.

On the first issue, the discussion summary of "Major Changes" released last week indicated that the Chairman's intention in H.R. 2944 would be to clarify the authority of cooperatives to aggregate retail customers.

And, we were pleased to see, the language of H.R. 2944 does, indeed, clarify the authority of cooperatives to aggregate retail consumers.

On the second issue, the summary signaled the Chairman's intention to give distribution cooperatives with limited transmission facilities – utilized only for the distribution of electric service – an uncomplicated way to obtain an exemption from the jurisdiction of the Federal Energy Regulatory Commission (FERC).

This is a laudable intent. More than 400 small electric distribution cooperatives use high voltage lines to provide retail electric service to their widely dispersed rural consumers. These facilities have no impact on the transmission grid, and should not be subject to expensive, unnecessary FERC regulation.

We were disappointed to see, however, that the language of H.R. 2944 was not consistent with the discussion summary. Although the summary described an uncomplicated self-certification process to exempt these distribution cooperatives from FERC jurisdiction, H.R. 2944 subjects these small distribution cooperatives to a complicated and uncertain process that does not accomplish the Chairman's goal.

Congress should not use FERC regulation as a barrier to small cooperatives and new entrants into the market place. We believe it is possible to create a simple, inexpensive, exemption process that provides small distribution cooperatives with the certainty they need.

On this same issue, we were concerned that both the discussion summary and the bill language would authorize FERC to review mergers between cooperatives.

In previous testimony before this Committee and the House Judiciary Committee, NRECA has expressed concern that mega-mergers in the electric utility industry could lead to undue market concentration that would harm competition, reduce the quality of electric service, and raise prices for consumers. For that reason, we welcomed the bill's restoration of FERC authority to review public utility mergers. And, as I discuss in the second section of this testimony, below, we are concerned that the bill still unduly restricts FERC's ability to review these mega mergers.

At the same time, however, we are concerned that the bill also requires cooperatives to obtain FERC approval before they can merge. I want to emphasize the unnecessary burden that this provision imposes on electric cooperatives and their member-consumers without providing any benefit to the objectives of the legislation.

Of course, we recognize the Committee's wish for a uniform approach to merger review, but there are legitimate differences that the Committee needs to recognize between mega mergers that could harm the development of competition for electric energy and mergers between small, member-owned electric cooperatives.

First, because of their small size and member-focus, mergers between cooperatives simply do not have the same impact on the competitive market as do mergers between large investor-owned utilities. If all of the generation and transmission cooperatives were merged into one national entity, that entity would not be as large as AEP – American Electric Power.

Moreover, cooperatives are selling most of the power they produce to their own members because they were formed to bring their members a reliable, affordable source of power, not to speculate in open markets or to make a profit. Even if they wanted to get involved in the open market, most generation and transmission cooperatives could not. Nationally, generation and transmission organizations generate only about half of the electricity required by their member systems. They do not have the uncommitted or merchant power supplies required to become major players in energy markets.

Second, mergers between cooperatives are also already subject to extensive review. Any merger of electric cooperatives requires the approval of their member-owners. And, any merger involving a cooperative with outstanding Rural Utilities Service (RUS) financing is subject to comprehensive review by RUS.

Instead of protecting the public interest, FERC review of cooperative mergers only makes it more difficult for cooperatives to meet their obligation to meet the power supply needs of their member consumers at the lowest possible cost. And, because of their small size, there are times when cooperatives can operate more efficiently, acquire power at lower costs and reduce market risks for their members by joining with their neighboring cooperatives.

Congress should be encouraging consumer-owned electric cooperatives to work together to provide better service for their member-consumers, not subjecting them to new regulatory burdens.

We would like to work with the Committee to draft an exemption from FERC merger review for those cooperatives that are small, sell power primarily to their own members and other cooperatives, or are already subject to federal merger review.

The second issue I want to raise today is the need for Congress to provide some consistency with respect to the non-electric businesses in which sellers of electric energy can engage.

Today, investor-owned utilities, municipal utilities, electric cooperatives, power marketers, and other participants in the retail electric market are subject to different limitations on their ability to participate in the market for non-electric products and services. Those differences are unbalancing the playing field in the electric energy market and increasing costs for consumers.

More and more, competitors in the electric energy market will be attracting consumers by offering packages of products and services. Consumers may be buying their electric energy, their natural gas or propane, their cable television, and their local telephone service from the same company.

If one class of participants in the electric energy industry is denied the right to offer services that other participants can offer, it will be unable to meet the needs of consumers interested in packaged offers. So limited, that class of participants will be at a distinct disadvantage.

We would like to work with the Committee to draft language that would ensure that all participants in the electric energy industry are on an equal footing. Such language would not give sellers or distributors of electric energy the right to sell any particular product or say that states have to allow any seller or distributor of electric energy the right to sell any other product or service. All it would say is that states have to treat all providers equally.

This language is particularly important if Congress chooses to repeal PUHCA. Proponents of PUHCA repeal have argued that it makes no sense to impose artificial restrictions on the lines of business that certain utilities can engage in based solely on the form of those utilities' corporate structure. That logic applies here as well.

Now, you are probably already hearing from some who are pressing for restrictions on cooperatives. In recent weeks, for example, a number of propane gas spokesmen and their hired

Washington-based lobbyists have circulated misrepresentations on Capitol Hill, charging electric cooperatives with unfair competition in the provision of propane service.

These spokesman claim that cooperatives utilize low-interest funding from the Rural Utilities Service to set up propane companies that compete unfairly by selling propane at "below market" prices, and that cooperatives are able to do so because those propane operations are "cross-subsidized."

Let me put that notion to rest right here and now. Electric cooperatives may not, by law, cross-subsidize a subsidiary organization, be it propane, provision of water and sewer utility services, Internet access, satellite television service or home security services. All costs of subsidiaries are allocated to those subsidiaries or those subsidiaries are operated with separate staff and facilities.

Electric cooperatives that enter the propane business generally enter because their consumers request it or because existing small propane organizations approach the cooperatives to take over the business. The resultant propane businesses operate to recover costs, not profits, and their rates reflect that.

Some charge that cooperatives providing diversified services are able to compete at an advantage because they "don't pay taxes." It is true that most cooperatives pay no *federal* income taxes on their electric business because they are tax-exempt companies and because they operate on a not-for-profit basis. But, when cooperatives engage in most diversified businesses, they must pay unrelated business income tax on any profit they make from those businesses. Moreover, if the cooperatives pass any revenue from those diversified businesses to their consumer-owners as dividends, the cooperatives' members must pay income taxes on those dividends.

Further, cooperatives and their subsidiaries pay every other business, personal property, transaction, sales, or other tax that every other business entity pays.

I just wanted to make that clear. Cooperatives are different from corporations and proprietorships and partnerships in a number of ways: they are organized by and for consumers;

they operate as non-profit entities; their sole focus is the provision of services to their consumers and responding to requests for services from those consumers. In the realm of state and local taxes, though, they are exactly the same as every other business.

This is important to bear in mind in the restructuring of the electric utility industry. Because cooperatives are consumer-owned and consumer-driven organizations with a history of success in providing services, consumers look to their cooperatives to provide additional services necessary for the their communities. Limitations on the ability of cooperatives to continue to provide these services, to provide services that every other electric utility can provide is a restriction on the ability of consumers to provide for themselves.

The last issue I want to focus on today is the need for electric cooperatives to work together to meet consumer needs.

Let me give you an example. In Georgia, electric cooperatives serve a number of Kroger supermarkets. Kroger, for reasons of efficiency, wishes to receive one bill for the electric service for all of its stores.

When Georgia moves to competition, a single large power marketer or investor-owned utility could probably provide that service directly. It would have the geographic scope and resources to be able to do so. But it would not have any local relationship with the individual Kroger stores or the communities in which they operate.

On the other hand, the several electric cooperatives now serving the Kroger markets do have that long standing relationship with the stores and their communities. But, because more than one cooperative would have to work together to provide a common service, they might not be able to provide that consolidated bill directly without violating federal antitrust laws.

Instead, they would have to expend the resources to organize a joint venture specifically to provide that service. And even so, they could inadvertently violate federal antitrust law.

Federal antitrust law was just not written with consumers or cooperative consumer organizations in mind, and the law sometimes gets in the way of common sense. The kind of cooperation that could better serve consumers—in this case, both Kroger and the cooperatives other members — was not contemplated by the law.

I recognize that this is not the jurisdiction of this Committee, but I also recognize the Committee's interest in all of the issues related to true competition in the electric utility industry. I'm not suggesting that cooperatives be exempt from antitrust provisions. I am pointing out to the Committee that the competitive bar is higher for small entities than it is for large, interstate and international utilities.

Additional Areas Of Concern

While the three issues emphasized above are NRECA's key priorities, there are a number of other issues in the bill that are of concern to electric cooperatives and their members. As this bill moves through the legislative process, we intend to continue to work to address these issues. For the convenience of the Chairman and the Committee, I'd like to discuss these matters sequentially as they appear in the bill, rather than in any priority order.

Findings

H.R. 2944's ninth finding states:

> Federal programs to benefit rural consumers have succeeded, and rural America has been electrified. However, rural America pays some of the highest electric rates in the country. Competition will assure reliable, reasonably priced rural electric service.

This finding is inaccurate. Rural America pays high electric rates because it costs more per consumer to provide distribution service, not energy. To serve their members, rural utilities must string far more wire and cross far more rugged country than the suburban and urban utilities. Rural electric cooperatives serve an average of 5.76 consumers per mile of line. By contrast,

investor-owned utilities average 34.85 consumers per mile of line and municipal utilities average 47.76 consumers per mile of line.

Restructuring will only bring competition to sales of electric energy, not distribution or transmission. Thus, even if competition lowered energy costs, it would not have any effect on distribution costs, the largest contributor to rural consumers' high energy costs.

There is also significant question whether restructuring will bring benefits to rural consumers. A draft study by the Department of Agriculture, and studies completed by the American Gas Association, the Competition Policy Institute, and several universities have all found that competition could actually raise rates in rural communities and largely rural states.

Experience in states that have already restructured also cast doubt on this Finding. Pennsylvania has often been touted as the state whose electric restructuring efforts have brought choice to the most consumers. To take advantage of that choice, Pennsylvania's electric cooperatives opened up their systems ahead of schedule to allow every one of their members the right to choose his or her electric supplier. Yet, there is not one alternative supplier of electric energy today willing to offer competitive service to those cooperatives' members. The benefits of competition have not reached Pennsylvania's rural communities.

Regional Transmission Organizations

NRECA has several concerns with § 103 of the bill concerning regional transmission organizations (RTOs)

Mandatory Participation

NRECA has long been supportive of voluntary RTOs. As NRECA has stated in its comments on FERC's Notice of Proposed Rulemaking on RTOs, NRECA believes that properly designed RTOs can provide significant system benefits, increasing reliability and reducing the ability of transmission owners to exercise market power.

Mandatory RTOs, however, as provided by H.R 2944, pose several risks to the reliability of the system and to the healthy operation of energy markets. We hear from our members that the only thing worse than no RTO is a bad RTO. An RTO put together too fast, without full agreement of all industry participants and without adequate review from FERC is a prescription for problems. A bad RTO can make it easier for transmission owners to exercise market power, to favor their own generation, to restrict the flow of power across the RTO, or to raise transmission prices unreasonably. By mandating the formation of RTOs at short notice, and by restricting FERC's ability to regulate the structure, type or form of an RTO, the language now in H.R. 2944 could make the formation of bad RTOs far more likely.

Independence

We are pleased that the standards for regional transmission organizations in § 103 of the bill require RTOs to be independent of all market participants. We are concerned, however, that H.R. 2944 requires FERC to accept as "independent" RTO structures that we believe could continue to allow large utilities to exercise undue control over their transmission facilities. That could require FERC to accept RTOs that retain, or even exacerbate, existing problems with reliability and market power.

Moreover, pursuant to its Notice of Proposed Rulemaking on RTOs, FERC is currently holding a public process to develop appropriate standards for RTOs. All interested parties, including utilities, consumers and even Wall Street, are now filing comments and reply comments with FERC. Among other issues addressed in those comments is the appropriate definition of "independence." H.R. 2944's definition pre-judges that process and imposes its own definition in the absence of a public process.

We would like to see the definition of "independence" deleted from § 103 of the bill.

Incentive Pricing

We have a similar concern with respect to the subsection in the bill addressing "Incentive Transmission Pricing Policies." That section requires FERC to encourage incentive transmission pricing policies for RTOs. As with the issue of "independence," appropriate pricing policies for RTOs is currently subject to public debate at FERC. The issue has arisen not only in the context of the RTO Notice of Proposed Rulemaking, but also in the context of at least one pending case on an individual RTO's rates.

Again, we think that H.R. 2944's provision has inappropriately pre-judged the proper result of an ongoing public process. We would like to see the standards in this section made voluntary for FERC so that FERC is free, when it has completed its current investigation, to apply the rule that it finds most likely to serve the public interest.

Electric Reliability

I would like to thank the Chairman and the Committee for including in H.R. 2944, with only minor amendments, the electric reliability language that was adopted by the NERC Board of Trustees. NRECA, and a coalition of other industry participants, believe that the language adopted by the NERC Board comprises the best option now possible to provide for the continued reliability of the bulk power system.

Rather than express concerns with the language in the bill, I would instead ask the Committee to resist requests to further amend the language. There are those who oppose certain aspects of the language, or who would like a greater say in the operation of the electric reliability entity or the bulk power system than the language allows, and NRECA and the coalition are continuing to talk to those interests to see if a compromise can be worked out.

We respectfully request that the Committee not make further changes to the reliability language until that group can reach agreement. Otherwise, the fragile consensus that has developed within

the industry on the NERC language could dissipate, and result in failure to enact much needed legislation to preserve reliability.

Mergers

As I mentioned in the main part of my testimony, NRECA is very pleased that H.R. 2944 restores FERC merger review. As I have testified to before this Committee and the House Judiciary Committee, unfettered mega-mergers in the electric utility industry pose a significant threat to the development of competition in the industry.

Unfortunately, while H.R. 2944 does restore FERC merger review, it also appears to reduce the opportunity for public scrutiny of mergers and to hamper FERC's ability to protect the public interest.

First, H.R. 2944 replaces the current hearing process with a simple comment period. By doing so, H.R. 2944 reduces the transparency of the merger review process and denies FERC and the public the access to information they need to properly evaluate the potential competitive impact of the proposed merger.

Second, H.R. 2944 also establishes strict deadlines that would hamper FERC's ability to thoroughly review large utility mergers. Some of these mergers involve international companies with hundreds of subsidiaries and affiliates, billions of dollars of assets in a dozen or more states, and millions of consumers. The time limits imposed by H.R. 2944 would not give FERC sufficient time to evaluate the impact that such mergers would have on the $220+ billion electric industry.

NRECA continues to believe that it is in the public and consumer interest for FERC to have full authority to conduct a public review of mega-mergers between public utilities that could eliminate or limit competition in the marketplace.

The Committee should understand that electric cooperatives do not oppose all utility mergers. Mergers can be a legitimate business strategy to respond to changing markets and changing market conditions. Since 1996, FERC has given its blessing to approximately 30 utility mergers and many more are pending. NRECA has requested hearings in only two of those proceedings.

In fact, NRECA has supported the application of loosened review requirements for mergers between smaller entities that could increase competition in the market place by creating a new company that can compete more effectively without being large enough itself to exercise market power.

NRECA would be happy to work with the Committee and Congress to develop language that would achieve the proper balance between protection of the public interest and the encouragement of efficiency in the industry.

Public Utility Holding Company Act of 1935

As I have said in previous testimony, NRECA believes that it is a mistake to repeal the Public Utility Holding Company Act of 1935 (PUHCA). PUHCA protects both electric consumers and competition in the electric utility industry by helping to ensure that public utilities do not grow too large or complex to be effectively regulated.

If the Committee nevertheless intends to go forward with PUHCA repeal, NRECA strongly urges the Committee to consider the approach taken in the bill sponsored this Congress by Representatives Steve Largent (R-OK) and Ed Markey (D-MA), which takes a sensible approach. Their proposal would repeal the consumer protections in PUHCA only for those utilities that operate in states where competition has already been implemented. That approach would provide competition a better chance to put down roots and start to grow before any public utilities were freed from PUHCA's protective provisions.

Interconnection

NRECA recognizes that the development of new distributed generation technologies and the interconnection of such facilities to the grid are increasingly important. Cooperatives have made extensive use of existing distributed generation technologies and have been actively working to study new distributed generation technologies and to develop new applications where distributed generation can improve reliability and lower costs for consumers.

Cooperatives have also been involved in parallel efforts to develop standards for the interconnection of distributed generation technologies with the grid. One is being conducted by the Institute of Electrical and Electronic Engineers and the United States Department of Energy (DOE). The other is being conducted by the National Association of Regulatory Utility Commissioners (NARUC) and is funded by the DOE. Just this week, NRECA submitted comments on a Draft Report to NARUC on interconnection issues.

Nevertheless, NRECA is concerned that the substantive provisions of § 542 of H.R. 2944 could impose unnecessary costs on electric utilities and their consumers. Moreover, the section's requirement that FERC develop interconnection standards is probably premature. It would likely preempt the efforts now pending before the Institute of Electrical and Electronic Engineers and NARUC, and the tight deadline could require FERC to act before it or the industry fully understands the effects that developing distributed generation technologies will have on the safety and reliability of the interconnected grid.

Other PMAs

NRECA is concerned that § 632 of H.R. 2944, "Wholesale Power Sales By Federal Power Marketing Administrations," gives FERC the unnecessary and inappropriate authority to change rates set by the power marketing administrations.

Today, the PMAs are required to set their rates to recover their costs, as those costs are defined by Congress. They propose their rates to the Secretary of Energy who then submits them to

FERC for review. Because the PMAs rates must be set according to very specific statutory requirements, FERC does not today have the authority to modify the PMAs rates. Instead, if FERC is concerned about something in the rates, it can only reject the rates and remand them to the PMAs. That ensures that the final development of the rate is set by the regulatory entity most familiar with the costs that have been recovered and the statutory mandates with regard to the rates.

We would like to see all of § 632 deleted.

Net Metering

Section 702 of H.R. 2944 requires retail electric providers to make net meters available to consumers that have installed eligible on-site generating facilities. NRECA believes that net metering imposes an unreasonable obligation on electric consumers to subsidize those who install self-generation.

The policies require utilities to pay consumers retail price for wholesale power. That is an even higher subsidy than the "avoided cost" price provided by PURPA. The policies also require utilities to pay high costs for what is generally low-value power. Power from wind and photovoltaic systems is intermittent, cannot be scheduled or dispatched reliably to meet system requirements, and is expensive to integrate into the system.

Further, net meters cause customers to under pay the distribution and other fixed costs they impose on the system. A utility has to install sufficient facilities to meet the peak requirement of the consumer and recovers the costs of those facilities through a kWh charge. When the net meter rolls backwards, it understates the total kWh consumed by the customer, and thus under recovers the utility's costs.

Finally, net meters can be deliberately or inadvertently "gamed." Consumers with self-generation can lean on the system by drawing power at times when it is expensive for the utility to provide it and then run down the meter by self-generating at times when the utility does not

need the power. That can be a problem with windmills particularly because wind is often calm in the hot times of day when system demand peaks, and then picks up again in the cool evenings when system requirements are low.

Environmental

We are pleased that Section 701 of H.R. 2944 was revised from the discussion draft to ensure that the Renewable Energy Production Incentive (REPI) program is available only to not-for-profit electric cooperatives and municipally-owned entities that generate electric energy for sale using solar, wind, biomass or thermal energy. In addition, we applaud deletion in H.R. 2944 of a cap of $50 million through 2004, which had appeared in the discussion draft.

Internal Revenue Code

While the 85/15 tax issue is addressed in H.R. 2944, it falls short of what is needed to address issues raised in a restructured electric utility marketplace. For example, the language fails to address revenue from unbundled electric activities (including metering, billing and service charges), revenues from asset sales, and revenue from diversified businesses provided the business is operated on a cooperative basis.

Technical Issues

In addition to the substantive issues discussed above, there are a few technical fixes that need to be made to ensure that the language in the bill actually achieves its intended purposes.

Public Purpose Charges

Section 101(d) of the bill provides that it does not affect the authority of a State or municipality to require public purpose charges. The section serves an important purpose, but appears to leave out some electric cooperatives.

There are three categories of electric utilities that may need to collect public purpose charges. The first -- state-regulated electric utilities -- includes all investor-owned utilities and a few cooperative utilities that operate in states where they are subject to state regulation of their rates. The second category is municipal utilities, who are not regulated in most states. The third category is cooperatives who, like municipal utilities, are not regulated in most states. Section 101(d) takes care of the first two categories, but not the third: non-state regulated cooperatives.

We would be happy to suggest to the Committee a very simple fix to address this oversight.

Definition of Transmitting Utility

Section 102(d) of the bill includes a new definition of transmitting utility. It has been amended to include utilities that own transmission not used for wholesale sales. In H.R. 2944, an additional parenthetical has been added at the end that has not appeared in prior drafts: "(other than facilities subject to an order of the Commission under section 210 or 211)."

That parenthetical appears to be a partial transposition of language in the definition of "public utility" that states "other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212."

The parenthetical creates a cyclical definition problem. Sections 210 and 211 apply to transmission facilities owned by transmitting utilities. If "transmitting utility" does not include entities that own facilities subject to §§ 210 and 211, then there are no transmitting utilities.

Reciprocity

Section 501 of the bill provides for retail reciprocity. It attempts to ensure that any utility that seeks to compete for other utilities' consumers provides its own consumers with choice. In order to prevent efforts to bypass the reciprocity provision, the bill also applies to entities affiliated with electric utilities.

NRECA believes that Congress should not have to mandate reciprocity requirements. A national mandate inappropriately imposes rules on those individual states that believe their consumers interests are better preserved through open competition than through reciprocity requirements.

Rather than focus on the merits of a reciprocity requirements, however, I would rather ask this Committee to make a technical fix to the section that should eliminate some unintended consequences of the bill.

As drafted, the provision applies to "affiliates," but the term "affiliate" is not defined in the Federal Power Act. It is unclear, therefore, how the section will be applied. Depending on a court's interpretation of "affiliate," the provision could either be too broad, or too narrow.

For example, under one definition of "affiliate," it would only include two companies, one of which owns an interest in the other. Under this definition, "affiliate" would not apply to two companies with common ownership. A utility could therefore evade the reciprocity requirements by creating a holding company and put power marketing and distribution functions in two sister subsidiaries.

On the other hand, "affiliate" could be interpreted broadly to include any two companies that share significant interests, in each other, or in a third company. FERC has adopted this interpretation of affiliate in certain contexts. Under this definition, there is a risk that two cooperatives that each have an ownership interest in a common generation and transmission utility could be considered affiliates. If that happened, the reciprocity provision could prohibit a cooperative in one state from competing for consumers in that state because the cooperative's G&T also served a cooperative in other states that had not moved to competition. The reciprocity provision could apply even though the two distribution cooperatives involved had no ownership interest in each other and no common owners.

We would be happy to work with the Committee to insert a definition of "affiliate" that would eliminate the potential for over inclusiveness or under inclusiveness.

Conclusion

Mr. Chairman, all of us harbor many concerns regarding the restructuring of this basic, essential, complex industry. The Committee and you -- in particular -- Mr. Chairman, have been attentive and receptive to the concerns of 30 million electric cooperative consumers.

This bill does not contain everything that electric cooperatives would like to see in a restructuring bill. We have outlined some of those concerns as an attachment to my testimony. We will continue to work with the Committee and with the Congress to ensure that electric cooperative concerns are met. That is how the legislative process works. Given the discussions that we have had with you, Mr. Chairman, and with the Committee, we are confident that some of these concerns will be worked out, and that the intentions of the discussion summary will be clarified in final bill language, and on the basis of that, electric cooperatives do not object to moving this bill forward.

It is, of course, possible that proposals to change this legislation will make parts of it totally unacceptable to electric cooperatives, and in that case, we would have to oppose those changes and, possibly, the legislation. Again, that's the way the legislative process works.

I appreciate the opportunity to discuss H. R. 2944 and these very important matters with the Committee today. Electric cooperatives will continue to be available to the Committee to bring true competition to the electric utility industry and to ensure that the benefits of that competition flow equitably to all electric consumers.

I would be happy to answer any questions.